IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 335 of 1998
With
CRIMINAL REVISION APPLICATION No. 336 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

CHINUPRASAD CHHABILDAS DOSHI - Applicant(s)
Versus
KETANKUMAR KANTILAL SHAH & 5 - Respondent(s)

==========

Appearance in CR.RA No: 335 of 1998 :

MR KJ SHETHNA for Applicant:
MR KB ANANDJIWALA for Respondent: 1,3 - 5.
RULE SERVED for Respondent: 2,
MR. M.A. PATEL, Ld. APP for Respondent: 6.

Appearance in CR.RA No. 336 of 1998:

MR. M.A. PATEL, Ld. APP for Applicant.

MR KB ANANDJIWALA for Respondents: 1-4.

==========

CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 02/08/2006

COMMON ORAL JUDGMENT:

Heard learned counsels for the parties.

1. Criminal Revision Application No. 335 of 1998 is preferred by the original complainant and the Criminal Revision Application No. 336 of 1998 is preferred by the State of Gujarat.

2. In these applications both the applicants have challenged the order of learned Sessions Judge, Panchmahals at Godhra dated 5/5/1998 passed below exhibit-4 in Sessions Case No. 188 of 1997, whereby the Sessions Court has partly allowed the application for discharge made on behalf of original accused under Section 227 of the Code of Criminal Procedure, 1973 [herein after referred to as the 'Code'] and discharged original accused nos 2 to 5 and ordered framing of charge against accused no.1 under Section 228 of the Code.

3. In Criminal Revision Application No. 335 of 1998 this Court (Coram: Kundan Singh, J) has passed an order on 26/5/1998 as under :

" Rule returnable on 22/6/98. In the meanwhile, further proceedings of Sessions Case No. 188/97 pending in the Sessions Court of Panchmahals at Godhra shall remain stayed till then. "

In Criminal Revision Application No. 336 of 1998, this Court (Coram: A.K. Trivedi, J) has passed order on 29/9/1998 as under :

" Rule made returnable on 8/10/98. Mr. M.R. Shah waives service of rule on behalf of respondents. To be tagged with Cri.R.A. 335/98. "

4. Copies of the relevant documents pertaining to Sessions Case No. 188 of 1997 have been produced by the applicant of Criminal Revision Application NO. 335 of 1998 and all the advocates have jointly submitted that the documents supplied by the revisional applicant of Revision Application No. 335 of 1998 are the copies of original record, therefore R & P is not required to be called for. These documents would be sufficient to dispose of the revision applications. In view of the consensus prevailing among the parties, this Court has proceeded with the matters on the basis of the documents pertaining to Sessions Case No. 188 of 1997 produced by learned counsel for the parties, without calling for R & P from the trial court. This course was found to be expeditious in view of the fact that, the trial could not be proceeded further after the stay order was granted by this Court on 26/5/1998 in Criminal Revision Application No. 335 of 1998, and pendency of the proceedings was prejudicial

to the interest of justice. Hence these matters are required to be disposed of on the basis of the record produced by the parties.

5. Brief facts giving rise to the Revision Applications deserve to be set out as under:-

5.1 On 31/12/1996 a janvajog entry came to be recorded at 4.45 p.m. by the Police Station Officer, Godhra Town police station on the information given by one Sonalben, who later on came to be arraigned as accused no.5 in C.R. No: I-2/97 for the offence under Section 498-A and 306 of I.P. Code. Said Sonalben – accused no.5 informed in the janvajog entry recorded at 4.45 p.m. On 31/12/1996 that her sister-in-law (Dherani) had gone to the first floor of their residential premises for collecting cloths kept for drying and at that time while trying to put the TV pin into the socket some kind of spark or short circuit took place, and her clothes caught fire, and she suffered burn injuries on her entire body. On hearing her shouts, Sonalben and others went upstairs, the husband of deceased Shitalben, poured bucket of water and others tried to extinguish the fire with the help of quilt etc. The deceased was thereafter taken to hospital for treatment and during her treatment she died. The janvajog entry came to be recorded at 16.45 p.m. On 31/12/1996. Inquest panchnama was made in the night at

3.20 hrs on 1/1/1997. The panchnama at the scene of offence was drawn on 1/1/1997 at 16 to 17.15 hrs. Thereafter dead body was sent for postmortem and the post mortem report was also obtained. Again there was panchnama drawn by the Scientific Officer of FSL which seems to have been drawn on 5/1/197 at 15 to 16.30 hrs. Statement of witnesses and other connected persons were recorded on various dates. The police recorded statement of the complainant Shri. Chinuprasad Chhabildas Doshi, who is the applicant before this Court in Criminal Revision Application No. 335 of 1998 and who was the complainant in respect of offence registered as C.R. No: I-2/97 and who happen to be the father of the deceased Shitalben.

5.2 The statement of Chinubhai – the complainant came to be recorded on 1/1/1997, wherein the complainant who had not filed complaint at that time stated before the police that his daughter – the deceased had married to one Ketankumar Kantilal Shah in the year 1994. This was a love marriage. Out of this wedlock, Shital gave birth to one daughter who was by then aged about 1 year 9 months. He has stated to the police that when he was sitting at his shop at Lunawada along with his son, one relation of his son-in-law Ketankumar came to inform him that his daughter had received burn injuries as a result of short circuit on upper

story of her residence and therefore she was taken to Ashirwad Hospital of Dr. Chinubhai Shah, Lunawada. The complainant went along with the scooterist who had come to inform him about the incident and saw his daughter in a serious condition. On inquiring with his son-in-law he came to know that due to spark in the switch board on the upper story it appeared that sari and sweater of deceased caught fire which had resulted into serious burn injuries on her person. Thereafter, the complainant called on his relations and it was decided to take Shital for further treatment to Godhra in the hospital of one Dr. A.P. Pandya. 3 private vehicles were pressed into service for taking patient to Godhra. As Dr. Pandya declined to treat her on account of the incident being medico legal case, the deceased Shital was thereafter taken to the Civil Hospital, Godhra. In the Civil Hospital, Godhra, the doctor informed the complainant that there was bleak chance of his daughter being survived as the case was serious, though the treatment was going on. The complainant had further stated before the police which has been recorded in the statement that on patient's condition becoming critical the relations including brother-in-law and his elder brother Vipulkumar had decided to take her to Vadodara after telephonically fixing appointment with Dr. Sanjay Malay. There after she was taken in a vehicle to Vadodara at about 7.00 hrs and near

Halol her condition became more serious and therefore she was required to be taken to Halol where Dr. Sanjay, who happen to be in relation with Dr. Chinubhai, spoke to his son-in-law and therefore, the complainant understood that his daughter was no more. Thereafter she was taken back to Godhra Civil Hospital where the doctor declared her to be dead. When they had firstly taken the patient to Godhra civil hospital, two officers had come for inquiry but his daughter could not reply. Thereafter they had taken his daughter's right thump impression on some form and the replies were given by his daughter's sister-in-law, who happen to be wife of Vipulkumar. He has also stated before the police in his statement that in the married life of his daughter there was no dispute and or any quarrel, she was not being harassed either by her parents-in-law or by her brother and sister-in-law (jeth- Jethani) nor was she subjected to mental or physical torture or harassment. He has also stated that, after the marriage whenever she use to visit the parents the deceased did no complain of any quarreling, any dispute or harassment form her in-laws and he reiterated that the aforesaid statement is correct and proper.

5.3 The police also recorded statements of one Shri. Rameshchandra Chabbildas Doshi on 1/1/1997 who happen to be elder brother of the

complainant Chinuprasad and uncle of the deceased. He has narrated the incident and stated at the end of his statement that during her married life deceased had never complained about any harassment from her in-laws nor was there any complaint of mental or physical torture received from her in-laws. She was frequently visiting her parents house and at that time no complaint was ever made by her about any harassment.

5.4 The neighbours and other relations statements were recorded from 1/1/1997 to 5/1/1997 and there is consistency in respect of no harassment meted to the deceased from her in-laws. However the neighbours have voiced in their statements before the police about their suspicion that the deceased might have committed suicide.

6. On 6/1/1997 the applicant / complainant Chinuprasad Chabbildas Doshi submitted a type written complaint to the Police Inspector, Lunawada stating that son-in-law had lost interest in his daughter and therefore in order to get rid of her he used to occasionally beat her. He had stated in the type written complaint that on 31/12/1996 the in-laws have with an intention to kill her set her on fire, as a result thereof she has died. This complaint came to be registered as C.R. No: I-2/97 for commission of offence under Section 306 and 498A

of I.P. Code. It is pertinent to note that though the complainant alleged against in-laws of his daughter that they were responsible for committing offence of murder, the police registered offence under Section 306 and 498A of I.P. Code. The statement of complainant came to be again recorded on 7/1/1997 pursuant to his type written complaint wherein he tried to explain his stand in his statement recorded on 1/1/1997 that as he was in deep shock and was aghast due to untimely & unnatural death of his daughter,he was not in a position to register any complaint. It is stated that after the incident when he reached home on that day his wife informed him that their deceased daughter had complained about their son-in-law Ketankumar who is named as accused no.1, used to drink liquor and beat her in order to get rid of her. The son-in-law was said to have been in habit of drinking liquor and beating deceased occasionally. The complainant also stated before the police in his statement dated 7/1/1997 that his son in law had illicit relationship with his sister-in-law Sonal, who had registered Janvajog entry on 31/1/1996 before Lunawada police station. the complainant also stated before the police in his statement dated 7/1/1997 that his daughter came to be murdered by in-laws after pouring petrol on her and setting fire on her. The complainant stated before police in his statement that he has also heard that his son-in-law had consumed liquor on that day and beaten his daughter. The word “Lokvayaka” is

used by complainant time & again in his statement while levelling allegations against the husband. The word Lokvayaka could be translated into English as “rumour or hearsay”. After this statement, statements of other relations namely sister of the deceased, friends of the deceased came to be recorded wherein it was stated by them that the accused no.1 was occasionally beating and harassing her. It was stated by deceased friends that deceased was not very happy at the place of her in-laws and she use to repent her marriage.

7. After the investigation was over the police filed chargesheet and the Magistrate concerned committed the case to the Court of Sessions at Godhra. Before the Sessions Court, Godhra, an application exhibit-4 came to be filed on behalf of the accused under section 227 of the Code praying that based on the material accompanying the police chargesheet it can well be said that there is no material on record to frame charges against the accused and therefore they deserve to be discharged. This application came to be resisted by the Public Prosecutor and also by the complainant who was permitted to submit his written submissions as it is recorded by the Sessions Court in the impugned order in the present application. After hearing the respective parties at length the Sessions Court has passed the impugned order dated 5/5/1998 below application exhibit-4 in Sessions Case

No. 188 of 1997 discharged original accused nos. 2 to 5 and ordered framing of charge against original accused no.1 for committing offence under Section 306 and 498-A of I.P. Code.

8. Being aggrieved and dissatisfied with the aforesaid order of discharge, the complainant has preferred Criminal Revision Application No. 335 of 1998 and the State has preferred Criminal Revision Application No. 336 of 1998.

9. Learned senior counsel Shri. Shethna has invited this Court's attention to janvajog entry made by accused no.5 Sonalben, wife of accused no.4 and submitted that the janvajog entry made by Sonalben ought to have been considered in its proper perspective by the Sessions Court as in the entry itself cause of death is said to be short circuit, while considering the statement recorded by police of the electrician and engineer of GEB it would be seen that there was no trace of any short circuit visible on the switch board or on the wall. The statement of electrician and the engineer has rendered the case projected by accused no.5 to be false. This was an attempt to camouflage the incident of offence of murder. Shri. Shethna has submitted that when the offence occurred the accused no.5 and accused no.1 were admittedly on the ground floor. Shri Shethna has taken this Court through the statements recorded by the police before the complaint came to be lodged on 6/1/1997 and also

the statements recorded thereafter. Shri Shethna has placed heavy reliance upon portion of the statement of the first informant which came to be recorded on 1/1/1997 wherein he has stated that the complainant has stated before the police that his daughter was not responding to the questions posed to her by those 2 officers who had taken her thump impression on some form. The answers were given by deceased's sister-in-law i.e. Sonal, accused no.5. Shri. Shethna has submitted that in view of this clear statement the reliance by the trial court on the dying declaration which does not disclose any act of her being set on fire by in-laws would be of no avail. Shri. Shethna has submitted that this was not the case which ought to have been registered under section 306 and 498-A alone. In fact the investigating agency ought to have recorded the offence under section 302 of I.P. Code as the complaint submitted by the complainant on 6/1/1997 unequivocally imputed the action and omission on the part of the in-laws, the accused named therein, for committing murder of his daughter. Shri. Shethna has further submitted that the dying declaration which does not disclose any assault or any act of her being set on fire by in-laws would be of no avail. Shri. Shethna has submitted that this was not the case which ought to have been registered under Section 306 and 498-A alone. In fact the investigating agency ought to have recorded offence under section 302 of I.P. Code as the complaint submitted by the complainant on

6/1/1992 unequivocally imputed the action and omission on the part of the in-laws in committing murder of his daughter. Shri Shethna has further submitted that the dying declaration which does not disclosed any assault or any burning of the deceased deserve to be viewed in light of the portion of the statement of the complainant made before the police on 1/1/1997 wherein he has stated that his daughter was unable to respond to the questions posed by the two officers.

10. Shri. Shethna has submitted that the panchnama made on the scene of offence also disclose that on the ground floor near the kitchen there was smell of kerosene noticed by the panch. This portion of panchnama deserve to be viewed which has an effect of nullifying and or raising serious doubt about the efficacy of the forensic science expert's report of having not found presence of any petroleum or kerosene which has been relied upon by the trial court. Shri. Shethna has also submitted that the statement of deceased's friend Alpa ought to have been considered in its proper perspective by the trial court as she has unequivocally stated before the police that deceased had complained about she being harassed by her husband time & again. Alpa has also given to the police during course of statement xerox copy of a letter purported to have been given to her by accused which does show the state of mind of deceased.

The said letter and statement of Alpa could not have been brushed aside by the trial court on merely saying that the letter purported to have been handed over by deceased to Alpa was merely an extract of quotation from some magazine. Shri. Shethna has submitted that the trial court has even gone to the extent of conjecturing and inferring these which was not permissible when the application of discharge under Section 227 was being examined.

11. Shri. Shethna has assailed the impugned order on the ground that the trial court was not required to meticulously scrutinize the evidence on record and consider their efficacy for framing the charge. Shri Shethna has submitted that during the course of examining application of discharge under section 227 the trial court was only required to see to it, whether any material existed against the accused so as to subject them to trial for the offence registered. The offence though not registered under section 302, the material disclosed would show that, it was in fact an offence of murder which was required to be tried at full length against the accused. Shri. Shethna has submitted that plea of alibi in respect of accused no. 2 to 5 ought not to have been believed and or examined by the trial court at the stage when he was merely examining the application for discharge. Shri. Shethna has further submitted that the trial court has merely proceeded on the

basis of the charges of commission of offence under section 306 and 498-A only, though there was abundant possibility available for arraigning the accused under section 302 for commission of murder also. Shri. Shethna has relied upon the decision of Apex Court in case of SANGARABOINA SREENU Vs. STATE OF A.P., reported in (1997) 5 SCC pg. 348, which has also been discussed by the Apex Court in case of SHAMNSAHEB M. MULTTANI Vs. STATE OF KARNATAKA reported in (2001) 2 SCC 577 in support of his submission that the Sessions Court ought not to have brushed aside possibility of arraigning the accused for commission of offence under Section 302. He has also relied upon another decision of the Apex Court in case of STATE OF HIMACHAL PRADESH Vs. KRISHAN LAL PARDHAN AND OTHERS, reported in (1987) 2 SCC pg. 17 and in case of STREE ATYACHAR VIRODHI PARISHAD Vs. DILIP NATHUMAL CHORDIA AND ANR., reported in (1989) 1 SCC pg. 715; and in case of PRANAB KUMAR MITRA Vs. STATE OF WEST BENGAL AND ANOTHER, reported in AIR 1959 SC, pg. 144; as to trial court has exceeded its jurisdiction & scope of inquiry under Section 227 of the Code while examining the application for discharge and erroneously recorded discharge in respect of accused no.2 to 5.

12. Learned APP Shri. Patel has adopted the submissions of Shri. Shethna made on behalf of applicant in Criminal Revision Application No.

335 of 1998 in support of the application made by the State. He has also made elaborate submissions in respect of the impugned order and tried to assail the order on the ground that there was sufficient material existed on the record for framing charges against accused no.2 to 5 also. Shri. Patel has invited this Court's attention to the statement of M/s. Bijal, Seema, Alpa, Sunita indicating that there were allegations against the in-laws that they use to harass the deceased. Against this backdrop Shri. Patel has submitted that it can well be said that there was sufficient material to arraign accused no. 2 to 5 for commission of offence under section 306 & 498-A. Shri. Patel has also made his submissions based on the record and pleadings of his counter part before the trial court. He submitted that the accused no.2 to 5 ought to have been arraigned for commission of offence under section 306 and 498-A of I.P. Code.

13. Shri. Anandjiwala, learned counsel appearing on behalf of the respondents/accused has submitted that the order of discharge is absolutely proper and valid and it does not call for any interference by this Court. Shri. Anandjiwala has submitted that the submissions made on behalf of the complainant that there ought to have been charge under section 302 of I.P.Code can not be permitted at this stage when the discharge application was allowed and the order

is being examined in revision application under Section 397 of the Code by this Court. The complainant had all the opportunity available to him as he was aware from the day he received copy of the complaint that his complaint was registered for commission of offence under section 306 sand 498-A of I.P. Code only. There is no application made on behalf of the complainant to any forum for seeking any direction to the investigating agency to register the complaint for commission of offence also under section 302 I.P. Code. The complainant has not raised this issue either at the time of receiving copy of the complaint or at the time when the matter was being committed to the Sessions Court under Section 209 of the Code. This submission, therefore, can not be made at this stage and the same may not have an effect upon the order of discharge. Shri Anandjiwala has submitted that the statement of father of the deceased, i.e. the complainant recorded on 1/1/1997 indicate that the complainant was in a proper state of mind. The narration contained in the statement about entire incident would go to show that he was not so perturbed as to permit so called offender to go scot free. That statement unequivocally contains fact regarding no harassment or torture either mental or physical from her in-laws to the deceased. He has in unequivocal terms stated that the deceased never complained about any harassment physical or mental from in-laws. This statement before police deserves to be viewed

with utmost care as it is always the tendency of deceased parents and relations to arraign every one from the family of the in-laws on death of bride. The complainant has not given any plausible explanation for not lodging complaint on the very day i.e. on 31/12/1996 or 1/1/1997 when he was informed about deceased's complaining about harassment from her husband. He waited up to 6th day and on 6/1/1997 a type written complaint is being lodged, wherein also the complainant has described his source of knowledge of harassment gathered by him in his own word as 'Lokvayaka' i.e. “ rumouors and hearsays”. Such a complaint containing allegation of commission of serious offence can not be taken lightly and rightly therefore the trial court has in detail examined the records and proceedings and come to the conscious conclusion that the material does not disclose any involvement of accused no.2 to 5 so as to subject them to rigmarole of criminal trial.

14. Shri. Anandjiwala has submitted that, it is an accepted proposition of law that while examining the discharge application under Section 227 of the Code the concerned court need not meticulously vet the evidence and documents. But it is also equally a sound proposition of law that if the material on record do not disclose any involvement of the accused on the face of it, then the accused need not be arraigned in the chargesheet and they deserve to be

discharged. Shri. Anandjiwala has submitted that the material's efficacy is also required to be tested whether there is any possibility of bringing home the guilt on the part of the accused in the ultimate result, then only the discharge application be rejected. This is also a very relevant factor to be borne in mind while examining discharge application made on behalf of the accused. Shri. Anandjiwala has relied upon the Apex Court decision in case of MADHAVRO JIWAJI RAO SCINDIA AND ANR ETC. Vs. SAMBHAJIRAO CHANDROJIRAO ANGRE & ORS. Etc. reported in AIR 1988 S.C. pg. 709, wherein Apex Court has observed as under:

" The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the controverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court can not be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a

case also quash the proceeding even though it may be at a preliminary stage. “

15. Shri Anandjiwala has submitted that perusing the statement of the witnesses recorded by the police right after the fateful day of death of deceased till the chargesheet came to be filed it can well be said that there is no clear and direct allegation of harassment on behalf of the in-laws baring the husband. The statements are consistent in respect of allegation against the husband only. The complainant himself has stated that the source of his knowledge about harassment was 'Lokvayaka'. The statement of Alpa, Sunita and other relations of the deceased, and the complainant did not disclose any act of harassment by the accused no.2 to 5 to the deceased, the court could not have lost sight of the requirement of Section 306 and 498-A of I.P. Code while examining application for discharge. The basic ingredient of harassment or imminent act of harassment of coercing the victim to commit suicide need to be disclosed by the prosecution either by way of documentary evidence or by way of oral statement recorded by the police. Neither the statement nor the documents accompanying the police chargesheet disclose that there was any role attributed or harassment attributed to the accused no.2 to 5 so as to arraign them for commission of offence under section 306 and 498-A of I.P. Code. Shri. Anandjiwala has submitted that in view of this

the order passed by the Session Court deserve to be upheld and as there is no material on record sufficient enough to arraign the accused no. 2 to 5 they may not be subjected to criminal trial for serious offence under section 306 and 498-A of I.P. Code.

16. This Court would like to record at this stage before examining various statements made on behalf of the respective parties that the observations, conclusions and scrutiny of the record is absolutely made for the limited purpose of deciding the present revision applications only and it shall have no bearing when the matter is put up for trial before the Sessions Court in respect of original accused no.1. It is clarified that the trial court shall not inspire and or be affected or impressed by any observation of this Court made in this decision after scrutinizing the record. As it is stated herein above, this exercise is undertaken only for testing and examining the order impugned in the present revision applications.

17. This Court is unable to agree with the submission of learned counsel Shri Shethna that the trial court ought to have framed charges not only under Section 306 and 498-A but also under Section 302. Shri. Shethna has mainly relied upon the allegedly incorrect version of accused No.5 given in Janvajog entry in support of his theory that in order to camouflage their crime

the accused no.5 had made up story of electric shock that stands belied from the statements of the electrician and the engineer. He has also assailed the veracity of the dying declaration on the basis of the complainant's statement recorded on 1/01/1997 that the deceased could not answer the questions asked by the two officers and it was the accused no.5 who replied to them. Assuming for the sake of examining this contention that it is correct then also in light of the circumstances unfolded during the course of investigation like the act of the accused no.1 & 5 and accused no.3 & 4 in taking the deceased to the hospital and informing the complainant, father of the deceased immediately would deal a serious blow to the theory of commission of murder. The material produced along with the police report did not warrant framing of charges under Section 302 of the I.P.C. The perusal of material produced by the prosecution, keeping Shri. Shethna's contention in mind, then also at the best it can be said to be a case of suicide and not murder. In cases of suicides also many a times relations of the deceased particularly in-laws have tendency to project it to be an accident. Thus statements of electrician, engineer coupled with the existence of smell of kerosene on the ground floor near kitchen casts serious doubts on the version of accident due to electricity spark etc. But this in itself can not be said to be factors supporting the theory of commission of murder. The presence of smell of kerosene on the ground

floor near the kitchen and absence of any mark of electricity spark or short circuit could also lead to the theory of commission of suicide by burning. Moreover it is need to borne in mind that the black spots due to spark were noticed upon the walls of upper-story in absence of any smell of kerosene therefrom. The report of FSL also does not record any findings of kerosene etc. In view of this Shri. Shethna's submission that the trial court ought to have framed charges for commission of offence under Section 302 also, seems to be untenable.

18. Shri. Shethna has cited a decision of the Apex Court i case of SANGARABOINA SREENU Vs. STATE OF A.P. Reported in (1997)5 SCC at page 348, and submitted that, Apex Court has observed that the offences under Section 302 and Section 306 are quite distinct and when the accused is facing charges of commission of offence under Section 302 can not be convicted under Section 306 on the ground that it was a minor offence compared to offence under Section 302. Shri. Shethna submitted that he relied on this judgment only to point out that offence under Section 302 is distinct and it has a different category altogether. Shri. Shethna has relied upon the decision of the Apex Court in case of SHAMNSAHEB M. MULTANI Vs. STATE OF KARNATAKA, reported in (2001) 2 SCC at page 577, also in case of PRANAB KUMAR MITRA Vs. STATE OF WEST BENGAL & ANR., reported in AIR 1959 SC pg. 144 in support of

his contention. This Court is of the considered opinion that the ratio laid down in these decisions does not help the case of the applicant at all. The material accompanying the Police Report do not indicate even remote possibility of commission of offence of murder warranting framing of charge under Section 302 of I.P. Code.

19. It deserved to be recorded at this stage that the offence is registered under Section 306 and 498-A of I.P. Code. Thus while deciding the applications and examining the order impugned the basic ingredients of Section 306 and 498-A of I.P. Code deserves to be borne in mind. For framing charge under Section 306 the overt act and or omission coercing the victim for committing suicide on the part of the accused need to be revealed in the document and or oral testimony of the witness. The role of accused is that of abettor only. For framing charge in respect of commission of offence under Section 498-A the factum of cruelty is required to be alleged and averred strongly inspiring confidence. The allegation must be based on proper source of information to frame charge against the accused. The word cruelty has been explained by the legislature under section 498-A. Under explanation - “cruelty” mans – (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or

health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.“

The complaint and other statements recorded during investigation must disclose sufficiently any overt act or omission so grave as to drive the victim to commit suicide. The cruelty by the bride's relation and in-laws for any purpose and or for the purpose of dowry is required to be narrated in such a way as to create strong suspicion that the suicide was direct result of the same for framing the charges under Section 498-A & Section 306 of I.P. Code.

20. Now let us examine whether any material existed on the record produced by the prosecution warranting framing of charges of commission of offence under Section 306 and 498-A of I.P.C. against the accused no.2 to 5 ? The scrutiny of relevant documents and statements recorded during the investigation would amply demonstrate that framing of charge of commission of offence under Section 306 and Section 498-A against accused no.2 to 5 was not warranted at all.

(1)The statement of deceased's father recorded

on 1/01/1997 though raises some doubt about the dying declaration; but that in itself is not strong enough to lead to even a strong suspicion about commission of offence of murder. On the other hand the vivid narration and enlisting of events in the said statement gives away strong impression that the maker thereof was man of poise and was making the statement without any kind of mental block. In this statement the complainant has in unequivocal terms stated that his daughter the deceased never use to make any complaints about any harassment or torturing from her in-laws. This statement deserves to be viewed with due weightage. If the deceased had made any complaints on earlier occasion about any torture or harassment from her in-laws, especially accused no. 2 to 5 then the father would have stated the same on the very first instance and rather he would have also lodged complaint against the in-laws and husband right then. It is all the more so when the deceased had married the accused no.1 against her parents wishes. The complainant's explanation about his stand in the first statement, and later on making complete somersault and coming out with allegation of murder against the husband and in-laws based upon his hearsay, “Lokvakya” or rumours, can not be accepted to be correct for arraigning accused no. 2 to 5 for commission of serious offence under

Section 306 and 498-A of I.P.C.

(2)The Complaint dated 6/01/1997 does not disclose any specific event or incidence of torture or harassment reported to him by the deceased herself or by any of her relatives or friends. The complainant himself has stated that he had heard that the husband was drunkard and was in habit of beating the deceased. He stated in the complaint that his source of information is only “Lokvayka” i.e., rumours and hearsay. In the entire complaint except vague and inconsistent accusation of murdering his daughter no concrete information with regard to act of cruelty or torture by accused no.2 to 5 is mentioned. The complainant has attempted to explain his stand in his statement dated 1/01/1997 on the ground that due to shock on account of untimely unnatural death of his daughter he was unable to give complaint and he received information from his wife and another daughter Sunita, after going home on the fateful day that, his daughter use to complain about torture from her husband, does not seem to be genuine. In fact the delay of six days in coming to police for filing the complaint also remains to be explained. This complaint also does not contain any specific allegation of torture or harassment from accused no.2 to 5 so as to arraign them for commission of offence

under Section 306 and or Section 498-A of the I.P.C. The subsequent statement of the complainant is merely reitration of the complaint.

(3)The statement of neighbours contain suspicion about some sudden quarrel of deceased with her husband resulting into her committing suicide but they do not contain any statement that the deceased was ever tortured or harassed by her in laws especially accused no.2 to 5. The neighbours various statements recorded on various dates before and after the complaint contains the statement that they have not come across any incidence of torture or harassment of deceased by her in-laws. One nighbour Smt. Madhuben has in her statement recorded on 2/1/1997 stated that she being their neighbour used to frequently visit the house of the deceased and accused but on no occasion it ever appeared to her that deceased was ever harassed or tortured by her husband or in-laws. The police have also recorded the statement of the mother of the deceased on 7/01/1997 wherein also she has stated that her daughter use to make complaints about her husband – accused no.1. In the statement of the mother of the deceased also the allegation of torture from the deceased's in-laws, accused no.2 to 5 can not be made out so as to arraign them

for commission of offence under Section 306 and 498-A of I.P.C. The statement of deceased's friends and sister contains general and vague allegation that deceased use to complain about taunting from in-laws of the deceased but that in itself alone can not be said to be so strong as to create suspicion about the accused no. 2 to 5's abetment to the deceased or their cruelty that might have driven her in committing suicide. A xerox copy of piece of paper purported to be in the handwritings of the deceased handed over to the police by one Alpa- a friend of the deceased also do not disclose that the deceased was subjected to any physical or mental torture so as to drive her to commit suicide.

(4) The consistent tone of the statement reveals only suspicion that the deceased might have committed suicide on account of her sudden quarreling with her husband but in absence of any material, in form of any statement, document attributing any overt act or omission on the part of the accused no.2 to 5 capable of driving the deceased to commit suicide, it can not be said that there was a case for drawing charge against the accused no.2 to 5 under Section 306 and Section 498-A of I.P.C.

(5) The dying declaration, postmortem report,

the report of the forensic laboratory and statements of neighbours do not indicate even remotely that there was any torture or harassment to the deceased by her in-laws namely accused no.2 to 5 so as to drive her in committing suicide.

(6) The complaint, the statement of the complainant recorded after lodging of the complaint, the statement of mother, sister and friends of deceased do contain very general and vague allegation that the deceased used to complain about taunting from her in-laws the accused no.2 to 5 but as it is stated herein above this in itself, in absence of any strong material showing any act of cruelty torture or harassment imminently attributable to the accused no.2 to 5 it can not be said that there was material for arraigning them for commission of offence under Section 306 and Section 498-A of the I.P.C.

(7) The postmortem note does not disclose any injury indicating any sign of torture or torment. In view of this the theory of any physical torture imminent prior to her death is ruled out.

21. The trial court has discussed the material placed on record by the prosecution. It has

rightly come to the conclusion that there exists no material against accused no.2 to 5 so as to arraign them for commission of offence punishable under Section 306 and 498-A of I.P.Code. The Apex Court has held in case of DILAWAR BALU KURANE Vs. STATE OF MAHARASHTRA, reported in (2002) 2 SCC at page 135 that the Court is not just to act as mouth piece of the prosecution while exercising its jurisdiction for framing charges. It has to shift and weigh the evidence for the limited purpose of finding as to whether a prima facie case was made out for framing the charges. In another case of STATE OF M.P. Vs. S.B. JOHARI & ORS. reported in AIR 2000 SC pg. 665 and in case of STATE OF MAHARASHTRA Vs. PRIYA SHARAN MAHARAJ & ORS, reported in AIR 1997 SC 2041 the Apex Court has held that in absence of sufficient material the charge can not be framed. Shri. Anandjiwala's submission that the statements of father, the complainant and other relatives of the deceased deserved to be viewed in light of the observation made by the Apex Court in para-5 of the Apex Court's decision in case of KANS RAJ Vs. STATE OF PUNJAB & ORS, reported in AIR 2000 SC, pg. 2324. Shri. Anandjiwala's reliance placed upon another decision of the Apex Court in case of NIRANJAN SINGH KARAM SINGH PUNJABI Vs. JITENDRA BHIMRAJ, reported in AIR 1990 SC pg. 1962 that at the Sections 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their

face value discloses the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose shift the evidence as it can not be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case, also deserves consideration.

22. Shri. Anandjiwala has canvassed a submission relying upon the decision of the Apex Court in case of MADHAVRAO JIWAJI RAO SCINDIA & ANR Vs. SAMBHAJIRAO CHANDROJIRAO ANGRE, reported in AIR 1988 SC pg. 709 that the Court shall discharge the accused if the material produced by the prosecution discloses very bleak chances of conviction. He has invited this Court's attention to the observation from para-7 of the judgment which has been quoted at para no.14 hereinabove.

This submission deserves consideration. The scheme of section 227 and 228 do not permit the Court to undertake an elaborate exercise to come to any definite conclusion about the result of the trial but it can surely bear in mind the material's efficacy in the trial and if the chance of conviction on the fact of the material are bleak then it could be one of the factors taken in to consideration while examining the plea of discharge. In other words it can be said that if the material produced on record does not

disclose all the ingredients constituting the offence alleged then the Court shall discharge the accused. If the material produced on record taken at its face value do not disclose all the ingredients for constituting the offence alleged then the trial court must discharge the accused. In the instant case as it is discussed herein above the material produced on record by the prosecution is accepted as correct on its face value then also it does not disclose any essential ingredient constituting offence under Section 306 and 498-A of the I.P. Code against the accused no.2 to 5, hence the discharge order in their regard deserves no interference. The revision application therefore deserve to be rejected.

23. In view of these facts & circumstances of the case, though this Court is not in complete agreement with some of the observations of the Sessions Court made in the impugned order, is of the considered opinion that, the order passed by the trial court does not call for any interference at this stage and therefore, the revision applications deserve to be rejected and they are hereby rejected. This Court however makes it abundantly clear that the trial pending against accused no.1 in no way is to be influenced or inspired or affected by any of the observations made in this judgment & order or in the order in judgment of the trial court impugned in these applications.

24. In the result, both the criminal revision applications stand rejected. Interim order passed in Criminal Revision Application No. 335 of 1998 shall stand vacated. Rule in both the applications are discharged.

[S.R. BRAHMBHATT, J]

/vgn